TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 311.

FOX FILM CORPORATION, PETITIONER,

vs.

FREDERICK M. KNOWLES, "WILLIAM" O. McWATTERS, &c.; HARRY MEYERS, AND JOSEPH S. KLEIN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 24, 1923.

CERTIORARI AND RETURN FILED MAY 11, 1923.

(28,781)

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1 *Bill of Complaint.*

United States District Court, Southern District of New York.

FOX FILM CORPORATION, Complainant,

against

FREDERICK M. KNOWLES, "WILLIAM" O. MCWATTERS (the First Name, "William," Being Fictitious, Real Name of This Respondent Unknown to Plaintiff), Harry Myers, and Joseph S. Klein, Respondents.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The complainant complaining of the defendant, alleges:

First. That at all the times hereinafter mentioned the complainant was and still is a corporation duly organized and existing
2 under and by virtue of the Laws of the State of New York, and having its principal place of business in the Borough of Manhattan, City of New York, in the Southern District of New York, and is a citizen of the United States.

Second. Upon information and belief, that at all the times hereinafter mentioned the defendants Joseph S. Klein, "William" O. McWatters and Harry Myers were the lessees of and managed, controlled and operated a certain place of public entertainment or theatre known as "The 14th Street Theatre" located at or near the Northwest corner of Sixth Avenue and 14th Street, in the Borough of Manhattan, City of New York, in the Southern District of New York, and, on information and belief, that the said defendants are residents of the Borough of Manhattan, City and County of New York.

Third. On information and belief, that at all the times hereinafter mentioned the defendant Frederick M. Knowles was and still is a resident of the County of Queens, in the City and State of New York.

Fourth. On information and belief, that prior to February 21st, 1873 one Will Carleton, a citizen of the United States, invented, originated, created and wrote a series or collection of poems entitled
"Farm Ballads," which contained two certain poems entitled
3 "Over the Hills to the Poor House" and "Over the Hills from the Poor House" written by the same poet.

Fifth. On information and belief, that prior to the 21st day of February, 1873, the said poet and author, Will Carleton, assigned said poems and literary properties "Farm Ballads" which included "Over the Hills to the Poor House" and "Over the Hills from the

Poor House," included all rights therein, and the right to secure copyright therein, to Harper and Brother, a publisher of literary works and poems.

Sixth. Upon information and belief, that thereafter and on or about February 21st, 1873, the said Harper and Brother duly copyrighted said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" by publishing the same in a collection of other poems by the same author entitled "Farm Ballads" with the following notice of copyright on the first page of said work "Farm Ballads" to wit: "Copyrighted by Harper and Brother February 21st, 1873."

Seventh. On information and belief, that after the publication of said collection of poems entitled "Farm Ballads" containing the aforesaid poems "Over the Hills to the Poorhouse" and "Over the Hills from the Poor House" with such notice of copyright as aforesaid, the said Harper and Brother promptly on the 21st day of February, 1873 deposited in the office of the Register of Copyrights, Washington, District of Columbia, two com-
4 plete copies of the best edition of the collection of poems entitled "Farm Ballads" containing the poems "Over the Hills to the Poor House," and "Over the Hills from the Poor House" then published, accompanied by a claim of copyright, and paid to the said Register of Copyrights the fee required by law for such registration, and the said collection of poems entitled "Farm Ballads" including said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" was duly registered by said Register of Copyrights.

Eighth. On information and belief, that thereafter and until on or about February 21st, 1901 Harper and Brother, the proprietors of the said "Farm Ballads" published various editions of the said collection of poems entitled "Farm Ballads," which always contained the aforesaid poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House," and upon each copy of such editions of "Farm Ballads" so published there was inscribed on the first page thereof the copyright notice required by law in the following words: "Copyrighted by Harper and Brother February 21st 1873."

Ninth. Upon information and belief, that within one year before the expiration of the copyright aforesaid duly obtained by Harper and Brother of the collection of poems entitled "Farm Ballads," which included the poems "Over the Hills to the Poor House
5 and "Over the Hills from the Poor House" and on or about the 7th day of January 1901 the said author Will Carleton in accordance with the Copyright Law, duly filed an application with the Register of Copyrights of the United States for the renewal of said copyright, and on or about the 7th day of January, 1901 the said copyright of the collection of poems entitled "Farm Ballads" including the poems "Over the Hills to the Poor House" and "Over

the Hills from the Poor House" was duly renewed from February 21st, 1901, for the period of 14 years to and including on or about February 21st, 1915.

Tenth. Upon information and belief, that from on or about February 21st, 1901, to on or about February 21st, 1915, the said collection of poems "Farm Ballads" including the poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" were published in several editions, and that there was inscribed on the first page of each work and edition the following words: "Copyright 1873 by Harper and Brother Copyright 1901 by Will Carleton."

Eleventh. Upon information and belief, that the said author of the poems "Farm Ballads," Will Carleton, on or about the 18th day of December, 1912, departed this life leaving a Last Will and Testament in which he bequeathed all his property as sole legatee to one
6 Norman E. Goodrich, a resident at that time of the Borough of Brooklyn, City of New York, County of Kings and State of New York, and also appointed therein the said Norman E. Goodrich as sole executor. That the said Will of the said Will Carleton was duly probated in the Surrogates Court of the County of Kings, State of New York, on the 21st day of March, 1913, and that on or about said date Letters Testamentary were duly issued out of the said Court to the said Norman E. Goodrich as executor, and that the said Norman E. Goodrich duly qualified as such executor and duly acted as such.

Twelfth. Upon information and belief, that within one year before the expiration of the renewal of the copyright duly obtained by the said Will Carleton, as set forth in paragraph "Ninth" hereof, the said Norman E. Goodrich, as executor and sole legatee of the estate of said Will Carleton, on or about January 21st, 1915 duly filed an application for the renewal of the said copyright with the Register of Copyrights, in accordance with the Copyright Law of the United States, and on or about the 21st day of January, 1915 the said copyright of the collection of poems entitled "Farm Ballads" including the poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" was duly renewed from February 21st, 1915 for the period of 14 years to and including on or about February 21st, 1929.

Thirteenth. On information and belief, that thereafter and at all the times hereinafter mentioned the said collection of poems
7 entitled "Farm Ballads" including the poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" were published in several editions, and that there was inscribed on the first page of each work and edition the following words:

"Copyright 1873 by Harper and Brother.
Copyright 1901 by Will Carleton.
Copyright 1915 by Norman E. Goodrich."

Fourteenth. On information and belief, that the said Norman E. Goodrich departed this life on or about the 27th day of July, 1915, leaving a Last Will and Testament in which he bequeathed all his property as sole legatee to one Alice L. Goodrich, widow of the deceased, a resident at that time of the Borough of Brooklyn, City of New York, County of Kings and State of New York, and also appointed therein the said Alice L. Goodrich as sole executrix. That the said Will of the said Norman E. Goodrich was duly probated in the Surrogates Court of the County of Kings, State of New York, on the 27th day of September, 1915, and that on or about the said date Letters Testamentary were duly issued out of the said Court to the said Alice L. Goodrich as executrix, and that the said Alice L. Goodrich duly qualified as such executrix and duly acted as such.

8 Fifteenth. That on or about the 26th day of October, 1920, the said Alice L. Goodrich, as executrix and sole legatee of the Estate of Norman E. Goodrich, deceased, for a valuable consideration, duly assigned to the plaintiff in writing the sole dramatic copyright of the said poems entitled "Over the Hills to the Poor House" and "Over the Hills from the Poor House" and gave to the plaintiff the exclusive right to dramatize the same for production on the stage throughout the world.

Sixteenth. That the said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" are and were capable of being dramatized and of dramatic representation, and the characters depicted in the said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House," by the words, expression and action as told in said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" unveil and tell a story and make and made its representation on the stage practical and effective.

Seventeenth. Upon information and belief, that prior to October 25th, 1920 the defendant Frederick M. Knowles, without the knowledge or consent of the plaintiff, or of the plaintiff's predecessors in title of the dramatic copyright of the aforesaid poems "Over the Hills to the Poor House," and "Over the Hills from the Poor House," and in infringement of such dramatic copyright and with full
9 knowledge of the plaintiff's and its predecessors' rights in said poems and of such dramatic copyright, wrote a drama entitled "Over the Hills to the Poor House," which drama written by said defendant Frederick M. Knowles, with certain elaborations and modifications, exhibits the characters, scenes, incidents, situations and climaxes as contained in the said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" and tells the story as told in the said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House."

Eighteenth. On information and belief, that thereafter on or about October 25th, 1920, the defendants Klein, McWatters and Myers, and at other times subsequent thereto, and without the knowledge or consent of the plaintiff or its predecessors in title and in infringement of the dramatic copyright of the poems "Over the Hills to the Poor

House" and "Over the Hills from the Poor House" and with full knowledge of the plaintiff's rights in such work and of such copyright, gave public performances and exhibitions for profit at the 14th Street Theatre, in the Borough of Manhattan, City of New York, of a drama entitled "Over the Hills to the Poor House" based upon the dramatic version written by the defendant Frederick M. Knowles as aforesaid with the permission, assistance and participation of the defendant Knowles, and such public performances
10 given by said defendants portrayed the characters, scenes, incidents, situations and climaxes as contained in the said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" and told the story as told by the said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House," and the said defendants threatened to continue such infringing performances.

Nineteenth. On information and belief, that in connection with the performances and exhibitions of the aforesaid drama "Over the Hills to the Poor House" given by said defendants, the said defendants caused to be issued many posters, handbills and circulars advertising the performances of the aforesaid drama "Over the Hills to the Poor House," and caused to be issued programs given to its patrons at said performances in said 14th Street Theatre during each of said performances the following:

89th Week. Beginning Mon. Oct. 25th, 89th Week.

A Special Matinee Will Be Given Thursday, 2.30 P. M.

Messrs. Klein, McWatters, and Myers Present

"Over the Hills to the Poor House,"

A Melodrama in 4 Acts.

Adapted from Will Carleton's Celebrated Poem.

By F. M. Knowles."

11 Twentieth. Upon information and belief, that the said public performances of the aforesaid drama "Over the Hills to the Poor House" by the said defendants at the said 14th Street Theatre in the Borough of Manhattan, City of New York, were given under their direction and for the entertainment of the patrons patronizing said theatre, and that the defendants have realized large profits and income from such infringing performances, and the said defendants have never been authorized by the plaintiff or its predecessors in title to tell the story of the poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" in a dramatic performance.

Twenty-first. That prior to the commencement of this suit your complainant duly notified the defendants of such infringement and requested said defendants to discontinue the same, but said defendants

have knowingly and willfully refused to discontinue such infringing performances and knowingly and willfully continued to conduct said infringing performances, and, on information and belief, will continue the same in violation of the dramatic copyright owned by the plaintiff as aforesaid.

Twenty-second. That unless the defendants are restrained from continuing the said wrongful act above set forth the said defendants' wrongful and unlawful acts will irreparably injure the complainant and will damage it to such an extent that no damages re-
12 coverable by an action at law would afford it adequate relief.

Wherefore, complainant prays

(1) That the defendants and each of them, and their attorneys, agents, and servants, and any and all persons acting under their direction, control, permission or license, be enjoined and restrained during the pendency of this action and perpetually, from publicly performing the drama "Over the Hills to the Poor House," and from causing or permitting the said drama to be publicly performed in the said defendant's premises, or in any place owned, controlled or conducted by said defendants and from aiding or abetting the public performance of said drama "Over the Hills to the Poor House" in any such place or otherwise.

(2) That the defendants and each of them render a full and true account of all moneys or profits derived by them, or either of them, from or by reason of the performance of the said drama "Over the Hills to the Poor House."

(3) That the complainant recover from the defendants the sum of Twenty-five thousand ($25,000.00) Dollars as and for its damages, and to that end the damages sustained by complainant by reason of such infringement be assessed and ascertained.

13 (4) That the defendants pay the costs of this action and that a reasonable attorney's fee be allowed to the plaintiff.

(5) That the complainant have such other and further relief as may be just and equitable.

SAUL E. ROGERS,
Solicitor for the Complainant.

Office & P. O. Address: 55th St. & 10th Avenue, Borough of Manhattan, New York City.

14 STATE OF NEW YORK,
County of New York, ss:

Jack G. Leo, being duly sworn, deposes and says: That he is the Vice President of the Fox Film Corporation, the complain-t in the within action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, ex-

cept as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

That the reason this verification is made by deponent and not by complainant is because complainant is a corporation and deponent an officer thereof, to wit, its Vice President.

JACK G. LEO.

Sworn to before me this 11th day of November, 1920.

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15 *Answer of Defendant Frederick M. Knowles.*

United States District Court. Southern District of New York.

FOX FILM CORPORATION, Plaintiff,

vs.

FREDERICK M. KNOWLES, "WILLIAM" O. McWATTERS (the First Name, "William," Being Fictitious, Real Name of This Defendant Unknown to Plaintiff), Harry Myers, and Joseph S. Klein, Defendants.

The defendant, Frederick M. Knowles, for his answer to the bill of complaint herein, respectfully shows and alleges:

First. He admits the allegations contained in paragraphs marked "First" and "Third" of said bill of complaint.

Second. He has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs marked "Second", "Fourth", "Fifth", "Sixth", "Sev-
16 enth", "Eighth", "Ninth", "Tenth", "Eleventh", "Twelfth", "Thirteenth", "Fourteenth", "Fifteenth" and "Nineteenth" of said bill of complaint, and therefore denies the same.

Third. Denies each and every allegation contained in paragraphs marked "Sixteenth" "Seventeenth", "Eighteenth", "Twentieth" "Twenty-first", and "Twenty-second" of said bill of complaint.

Further answering said bill of complaint, the defendant alleges:

Fourth. That about fourteen years ago, at the special instance and request of one Corse Payton, he made certain elaborations to and upon a play, then known as "Over the Hills to the Poorhouse."

Fifth. That when said elaborations were so made, different scenes of action and different climaxes were introduced.

Further answering said bill of complaint, defendant alleges:

Sixth. That if a production was given by the defendants Klein, McWatters and Myers, or any of the defendants herein, same was

given without the knowledge or consent and against the will
17 of this defendant, and this defendant did not authorize or give his permission to the defendants Klein, McWatters and Myers, or any of them, to print upon any programs any statement that the play or production produced by them was adopted from Will Carleton's celebrated poem by Frederick M. Knowles, and that this defendant did not realize any profits by reason of said production, and had no arrangements with any of the defendants, whereby he was to receive any moneys whatever by reason of this production.

Wheref-re, defendant having duly answered all the matters set forth in the bill of complaint prays this Honorable Court to enter its decree for the defendant by dismissing the bill of complaint with reasonable costs and charges in the matter wrongfully sustained.

Dated, New York, December 15th, 1920.

FREDERICK M. KNOWLES,
BICK, GODNICK & FREEDMAN,
Solicitors for Defendant Knowles.

18 *Verification.*

STATE OF NEW YORK,
County of Kings,
Borough of Brooklyn, ss:

Frederick M. Knowles, being duly sworn, deposes and says that he is the one of the defendants in the within action; that he has read the foreging answer and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

FREDERICK M. KNOWLES.

Sworn to before me this 15th day of December, 1920.

ETHAN R. KATZ,
Notary Public, Kings County.

19 *Answers of Defendants McWatters, Myers, and Klein.*

United States District Court, Southern District of New York.

FOX FILM CORPORATION, Plaintiff.

against

FREDERICK M. KNOWLES, WILLIAM O. MCWATTERS, HARRY MYERS, JOSEPH KLEIN, Defendants.

The defendants, Wilbert O. McWatters, Harry Myers and Joseph S. Klein, answering the bill of complaint herein, respectfully show and allege:

First. The defendants deny that they have any knowledge or information sufficient to form a belief as to the proof of each and every allegation contained in paragraphs in the bill of complaint numbered three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen, and therefore, the defendants deny the same.

Second. The defendants deny that the plaintiff is the right and legal owner of the right to dramatize the copyright of the
20 poems entitled "Over the Hills to the Poorhouse" and "Over the Hills from the Poorhouse", or that the plaintiff ever had any right to dramatize the same, or that the plaintiff has been damaged in any sum whatever, by reason of the acts of these defendants as set forth in the bill of complaint.

Third. The defendants deny that they infringed any rights of the plaintiff at the time when defendants were engaged in the dramatic production of "Over the Hills to the Poorhouse".

Wherefore, these defendants demand that the bill of complaint herein be dismissed with the costs of this suit, and that they have such other and further order and relief in the premises as to the Court shall seem proper.

JOSEPH S. KLEIN,
Attorney for Defendants.

Office & P. O. Address, 1493 Broadway, Borough of Manhattan, N. Y. C.

Verified by Wilbert O. McWatters, December 10th, 1920. Filed December 11th, 1920.

21 *Notice of Motion to Dismiss Bill of Complaint.*

United States District Court, Southern District of New York.

FOX FILM CORPORATION, Plaintiff,

vs.

FREDERICK M. KNOWLES, "WILLIAM" O. MCWATTERS (the First name, "William," Being Fictitious, Real Name of This Defendant Unknown to Plaintiff), Harry Myers and Joseph S. Klein, Defendants.

SIR:

Please take notice, that upon the bill of complaint herein, I shall move this Court at a Stated Term thereof to be held for the hearing of Motions at the Post Office Building in the Borough of Manhattan, City of New York on the 8th day of April, 1921, at 10:30 A. M., or as soon thereafter as counsel can be heard for an order

dismissing the bill of complaint herein on the ground that
22 there are not sufficient facts contained therein to make out a cause of action, and for such other and further relief as may be just and proper in the premises.

Dated, March 30th, 1921.

Yours, etc.,

BICK, GODNICK & FREEDMAN,
Sols. for Deft. Knowles.

Office & P. O. Address, No. 215 Montague Street, Borough of Brooklyn, City of New York.

To Saul E. Rogers, Sol. for complainant, 55th Street and 10th Avenue, New York City.

23 *Opinion of Hon. John C. Knox, D. J.*

United States District Court, Southern District of New York.

E 19—280.

FOX FILM CORPORATION, Plaintiff,

against

FREDERICK M. KNOWLES, "WILLIAM" O. MCWATTERS (the First name, "William," Being Fictitious, Real Name of This Defendant Unknown to Plaintiff), Harry Myers and Joseph S. Klein, Defendants.

Upon defendants' motions to dismiss complainant's bill, it being alleged that the same fails to state a cause of action.

Saul E. Rogers (Saul E. Rogers, Percy Heiliger, of counsel), for complainant;

Bick, Godnick & Freedman (Fred Francis Weiss, Louis R. Bick, of counsel), for defendants.

KNOX, *D. J.*:

The bill of complaint, so far as is now material, contains the following allegations of fact:

24 That Will Carleton was the author of a collection of poems, among which was one entitled "Over the Hill to the Poor-House," and another "Over the Hill from the Poor-House." Carleton assigned his interest in the poems together with the right to secure copyright thereon to Harper & Brothers, publishers. Upon February 21, 1873, said assignees duly copyrighted the said collection of poems, and published the same under the title of "Farm Ballads."

On January 7, 1901, and within one year of the expiration of the copright to Harper & Brothers, Carleton applied for and obtained

a so-called renewal thereof. The expiration of this renewal was February 21, 1915.

Carleton died December 18, 1912, leaving a will, wherein one Norman E. Goodrich was named as executor and made sole legatee of the testator's property. Letters testamentary were issued to Goodrich, in Kings County, New York upon March 21, 1913. Upon January 21, 1915 Goodrich "as executor and sole legatee of the estate of said Will Carleton duly filed an application for the renewal of said copyright" (obtained by Carleton) * * * "in accordance with the Copyright Law of the United States * * * and on or about the 21st day of January, 1915 the said copyright of the collection of poems entitled 'Farm Ballads,' including 'Over the Hill to the Poor-House' and 'Over the Hill from the Poor-House,' was duly renewed from February 21, 1915, for the period of fourteen years to and incuding on or about February 21, 1929."

25 All of the various publications of the said collection of poems are said to have been suitably inscribed.

On July 7, 1915, Norman E. Goodrich died. He left a will in which he gave all of his property to his wife, Alice L. Goodrich, and named her as executrix. This will was probated, and Mrs. Goodrich qualified thereunder.

By instrument dated October 26, 1920, Mrs. Goodrich purported to assign to plaintiff the sole dramatic copyright of the above-named "Poor-House" poems with the exclusive right to dramatize the same for production throughout the world. It is said that the poems lend themselves to the making of a practical and effective stage representation thereof.

The bill proceeds to allege that defendant Knowles, without the consent of plaintiff or its predecessors in title, and in infringement of plaintiff's dramatic rights, wrote a drama entitled "Over the Hills to the Poor House," which drama, with its elaborations and modifications, tells the story of Carleton's poem of that name. That thereafter, defendants Klein, McWatters and Myers, likewise without proper consent and with knowledge of plaintiff's alleged rights, and within this district, gave public performances and exhibitions of a drama entitled by the name of Knowles' dramatic version of the Carleton poem.

The foregoing averments, with certain others supplementary thereto, constitute the basis of complainant's claim to equitable relief.

26 Under Equity Rule 29 defendants seek the dismissal of the bill of complaint, it being contended that the same, upon its face, shows a failure of title to any copyright existing upon the poem in question.

It will be noted that complainant's bill does not state if, upon his decease, Will Carleton left him surviving a widow, or children, or any next of kin. In view of the source from which complainant asserts its alleged title, I consider the foregoing omission to be a defect in pleading. This is so by reason of the provisions of Section 24 of the copyright statute which regulates the succession of title to

copyright renewals. However, were it not for what I consider other insuperable objections I should allow complainant to amend its bill in the particulars just mentioned.

Since the present motion was argued and submitted, the Circuit Court of Appeals for this Circuit, speaking through Judge Hough, has decided the case of Silverman v. Sunrise Pictures Corporation. What was there said makes, I think, a substantial contribution to the law of copyright and is determinative of the result to be reached upon this motion.

The Court said:—"* * * we regard it as settled:

"(1) That the proprietor of an existing copyright as such has no right to a renewal.

27 "(2) There is nothing in Paige v. Banks, 13 Wall., 608, opposed to this ruling.

"(3) The statute confers no right of renewal upon administrators.

"(4) The purpose of the statutory renewal provisions is to give to the persons enumerated in the order of their enumeration a new right or estate, not growing legally out of the original copyright property, but a new creation for the benefit (if the author be dead) of those naturally dependent upon or properly expectant of the author's bounty."

Propositions (1), (2) and (3) effectively dispose of defendants' argument that the renewal which Carleton obtained of the original copyright issued to Harper & Brothers, was not held by him as Trustee for the publishers.

The Silverman case further holds that "Legatees as such never have any renewal rights because they are not named in the statute." Therefore, assuming that Norman E. Goodrich, as legatee of the author Carleton, acquired title to the renewal of the copyright which expired February 21, 1915, he could not again renew the same, for the reason that—and again I quote from the Silverman case—

"* * * the author cannot take away the rights of widow, children, &c., before the opening of the last year of original copyright. It is not until then that any estate or chose in action
28 arises or exists; and when such right arises it is,—as above stated—a new estate, not a true extension of the existing copyright. If it were otherwise, the author could grant to his first publisher the renewal right eo nomine which is exactly what the statute was designed to prevent.

"But what may be assigned can ordinarily be devised, and it results that before the statutory year, the author cannot devise the renewal right; consequently in this case Mrs. Wilson's legatees took no such right, so far as this novel is concerned, because shortly, the testatrix had as yet nothing to leave."

As it was with Mrs. Wilson so it was with Will Carleton—he died before the opening of the year within which the renewal obtained by him could again be renewed.

Judge Hough further said:—

"* * * we construe the section as vesting the right in, or imposing the duty on executors, only when the power or privilege of obtaining renewal was existing in the testator—author at the moment of decease. This avoids the anomaly of requiring executors as such, to do something in respect of a property right not passing by the will appointing them, or capable of so passing. It is
29 consequently held here, that since this renewal right did not exist, it was not affected by the will or the appointment of executors; in short there was a necessary absence of a will in respect of this right which only came into existence some five years after the testatrix died."

From this I reach the conclusion that neither as legatee, nor as executor, did Norman E. Goodrich obtain any valid copyright by the action taken by him on or about February 21, 1915. He therefore, had nothing which he could bequeath to his wife, and she in turn conveyed no title to complainant.

The bill, therefore, will stand dismissed.

May 18, 1921.

30 *Decree.*

At a stated term of the United States District Court held in and for the Southern District of New York at the Post Office building, in the Borough of Manhattan, city of New York, on the 3rd day of June, 1921.

Present: Hon. John C. Knox, United States District Judge.

Fox Film Corporation, Complainant,

vs.

Frederick M. Knowles, "William" O. McWatters (the First Name, "William" Being Fictitious, the Real Name of This Defendant Being Unknown to Plaintiff), Harry Myers, and Joseph S. Klein, Defendants.

The defendant, Frederick M. Knowles, having made a motion to dismiss the complainant's bill of complaint on the ground that it fails to state facts sufficient to constitute a cause of action, and after hearing counsel for the respective parties hereto, and due deliberation having been had,

31 It is on motion of Bick, Godnick & Freedman, solicitors for the defendant Frederick M. Knowles.

Ordered, adjudged and decreed, that the complainant, Fox Film

Corporation, has no valid copyright to the poem entitled "Over the Hills to the Poorhouse," and to the poem entitled "Over the Hills from the Poorhouse," nor has it the exclusive right to dramatize the said poems, or either of them, and it is further

Ordered, adjudged and decreed, that the Fox Film Corporation, the complainant herein, has no valid title to any copyright of the poems entitled "Over the Hills to the Poorhouse" and of the poem entitled "Over the Hills from the Poorhouse" and it is further

Ordered, adjudged and decreed, that the bill of complaint herein be and the same hereby is dismissed with costs, and it is further

Ordered, adjudged and decreed, that the defendant Frederick M. Knowles, do recover from the complainant Fox Film Corporation, the sum of Twenty-nine and 70/100 ($29.70/100) Dollars, as costs to be taxed by the Clerk of this Court, and that the defendant Frederick M. Knowles have execution therefor.

JOHN C. KNOX,
United States District Judge.

32 *Notice of Motion to Amend Decree.*

United States District Court, Southern District of New York.

FOX FILM CORPORATION, Plaintiff,

vs.

FREDERICK M. KNOWLES, "WILLIAM" O. McWATTERS, First Name "William," Fictitious, True First Name Unknown to Plaintiff, Harry Myers, and Joseph S. Klein, Defendants.

SIR:

Please take notice, that upon the annexed affidavit of Fred Francis Weiss, verified the 11th day of June, 1921, and upon the decree herein, and upon all the pleadings and proceedings, the undersigned will move this Court at a Stated Term thereof, to be held for the hearing of motions, at the Post Office Building in the Borough of Manhattan, City of New York, on the 17th day of June, 1921, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order amending the decree herein, by inserting therein a reasonable attorney's fee, and for such other and
33 further relief as may be just and proper in the premises.

Dated, June 11th, 1921.

Yours etc.,

BICK, GODNICK, & FREEDMAN,
Solicitors for Def. Knowles.

215 Montague Street, Brooklyn, N. Y.

To Saul E. Rogers, Solicitor for Plaintiff, 55th St. & 10th Avenue, New York City.

Affidavit of Fred Francis Weiss in Support of Motion to Amend Decree.

United States District Court, Southern District of New York.

FOX FILM CORPORATION, Plaintiff,

vs.

FREDERICK M. KNOWLES, "WILLIAM" O. McWATTERS, First Name, "William," Fictitious, True First Name Unknown to Plaintiff, Harry Myers, and Joseph S. Klein, Defendants.

CITY AND STATE OF NEW YORK,
County of Kings, ss:

Fred Francis Weiss, being duly sworn, deposes and says that he is associated with the firm of Bick, Godnick & Freeman, solicitors for the defendant Frederick M. Knowles in the above entitled action.

This action was brought by the plaintiff, Fox Film Corporation to restrain the defendants from infringing their alleged copyright to the film known as "Over the Hill," which was based upon Will Carleton's poems known as "Over the Hills to the Poor House" and "Over the Hills from the Poorhouse" and also to recover damages in the sum of Twenty-Five Thousand ($25,000) Dollars, together with costs and a reasonable attorney's fee.

The complaint was served upon the defendant, Frederick M. Knowles, on or about the 15th day of November, 1920. A Notice of Appearance was filed on behalf of the defendant Frederick M. Knowles on or about the 14th day of December, 1920.

It required a careful examination of the complaint to interpose a proper answer thereto, which necessitated an extension of time to answer, which was granted by the plaintiff's attorney, to the 23rd day of December, 1920.

That on or about the 23rd day of December, 1920 issue was joined by the service of the defendant Knowles' answer to the complaint.

That this case then was added to the calendar of this Court for trial.

That in March, 1921, I started to prepare this case for trial, and after a careful examination of the complaint herein, and the answer, came to the conclusion that the bill of complaint failed to state facts sufficient to constitute a cause of action, and thereupon, on the 30th day of March, 1921, made a motion to dismiss the complaint under Rule 29 of the Equity Laws of this Court.

This motion came on to be heard before Judge Knox on the 8th day of April, 1921, and was argued at length, and briefs were submitted.

That in preparing the memorandum, I spent a number of days in looking up the law with reference to the points involved, and spent another two days in preparing the brief. In this brief a number of points were discussed.

It required the examination of various text books, a study of many

cases and examination of the opinions of the Attorney General with reference to the copyright statutes.

After the submission of the briefs, Judge Knox rendered a decision dismissing the bill of complaint.

On the 3rd day of June, 1921, a decree was entered in accordance with the opinion, which decree dismissed the bill of complaint.

In the decree we failed to provide for a reasonable attorney's fee.

We, therefore, ask this Court for an order, amending the decree, by inserting therein a provision for the allowance to the defendant Knowles, an attorney's fee commensurate with the labors performed, together with the importance of the case, and the results obtained.

No previous application for this relief has been made, and your deponent will ever pray, etc.,

FRED FRANCIS WEISS.

Sworn to before me this 11th day of June, 1921.

RHODA MENDLE,
Notary Public, Kings County.

Kings Co. Clerk's No. 250.
Kings Co. Register's No. 2266.
Certificate filed in New York County.
Clerk's No. 704; Register's No. 2532.
Terms expires March 30th, 1922.

37 *Affidavit of Percy Heiliger in Opposition to Motion to Amend Decree.*

United States District Court, Southern District of New York.

FOX FILM CORPORATION, Plaintiff,

against

FREDERICK M. KNOWLES, "WILLIAM" O. MCWATTERS (the first name, "William," Being Fictitious, True First Name Unknown to Plaintiff), Harry Meyers, and Joseph S. Klein, Defendants.

STATE OF NEW YORK,
City and County of New York, ss:

Percy Heiliger, being duly sworn, deposes and says:

That he is associated with Saul E. Rogers, Esq., solicitor for the plaintiff in the above entitled action.

That your deponent has read the affidavit of Mr. Weiss, of counsel for the defendant Frederick M. Knowles, in support of the application for a counsel fee in the above entitled suit, and
38 while the facts therein stated are substantially correct, the learned counsel for the defendant, Frederick M. Knowles, neglects to mention certain other matters in connection with his motion to dismiss the bill, which indicate that the attorney for the defendant Knowles is not entitled to any attorney's fee in said suit.

In the first place, the defendant Knowles was not a very important party or factor in the prosecution of the above suit, as the actual alleged infringement was perpetrated by the defendants Harry Myers and Joseph S. Klein, the lessees of the 14th Street Theatre, who were represented by different counsel, and who did not join in any wise in said motion to dismiss the bill.

Furthermore it is apparent from the opinion of the learned Court dismissing the bill, that every one of the points and contentions raised by the learned counsel in support of his motion to dismiss the bill were overruled by the Court with the possible exception of the point raised that the bill failed to state specifically "that there were no widow, children, etc.," in accordance with the renewal copyright law, and which slight defect the learned Court held would have been unquestionably amendable. The real ground for the dismissal of the bill was because of the fact that after the argument of the motion to dismiss the bill, the learned Circuit Court of Appeals, in Silverman vs. Sunrise Pictures Corporation, rendered a
39 decision, which the learned District Court held made "a substantial contribution to the law of copyright and is determinative of the result to be reached on this motion." In other words, the alleged copyright of the plaintiff was held to be defective because it was determined in accordance with the Silverman case, that by reason of the fact that Will Carleton died in 1912; and not in 1914, within one year from the expiration of his first renewal copyright, that said executor and sole legatee had no right to make an application for a second renewal copyright, or being the sole legatee, could obtain no further rights of renewal. Although it is submitted that in my opinion the facts in the Silverman case were not exactly identical with the facts of the case at bar, nevertheless, in view of the attempted general statement of the law with reference to renewal copyrights contained in the said Silverman case, the learned District Court was undoubtedly compelled to follow such law laid down and dismiss the bill.

In view of all circumstances, therefor-, above mentioned, it is respectfully submitted that this is not a case where counsel is entitled to any attorney's fee, or if at all, a very nominal one. If he has gone to considerable trouble in looking up law on points that have been determined adversely to him, surely, the defendant should not pay for such labors. As the allowance of an
40 attorney's fee is discretionary with the Court in accordance with Section 40 of the Copyright Act, an allowance herein should not be granted.

PERCY HEILIGER.

Sworn to before me this 16th day of June, 1921.

GEORGE BLISS,
Commissioner of Deeds, City of New York.

41 *Affidavit of Fred Francis Weiss.*

United States District Court, Southern District of New York.

FOX FILM CORPORATION, Complainant,

vs.

FREDERICK M. KNOWLES et al., Defendants.

CITY AND STATE OF NEW YORK,
County of Kings, ss:

Fred Francis Weiss, being duly sworn, deposes and says: that I have had charge of this litigation from its inception, and am fully acquainted with all the proceedings had herein.

That when the defendant Knowles was served with process in this litigation, I immediately got in communication Saul E. Rogers, the attorney for the plaintiff, and asked him to discontinue against our client Knowles, as we did not believe he should have been made a party; that it would be expensive for Knowles to litigate.

Mr. Rogers refused to discontinue the suit against Knowles, whereupon I suggested to him that I would give him a consent
42 decree, and also consent to the issuance of an injunction, but no costs or damage should be demanded by him of our client.

This suggestion on my part, did not meet with Mr. Rogers' approval, and it then became necessary for us to litigate the matter.

We believe the Court should take these facts into consideration in the consideration of the question of the amount of the counsel fee to be allowed.

The reason for submitting this affidavit is because of the statement made in the affidavit in opposition that Knowles was a nominal defendant, which, to the mind of your deponent, aggrivates instead of mitigating the matter.

FRED FRANCIS WEISS.

Sworn to before me this 17th day of June, 1921.

RHODA MENDEL,
Notary Public, Kings County.

Kings Co. Clerk's No. 250.
Kings Co. Register's No. 2266.
Certificate filed in New York County.
Clerk's No. 704; Register's No. 2532.
Term expires March 30th, 1922.

43 *Memorandum Opinion, Knox, D. J.*

United States District Court, Southern District of New York.

FOX FILM CORPORATION, Plaintiff,

vs.

FREDERICK M. KNOWLES, "WILLIAM" O. McWATTERS, the First Name, "William," Being Fictitious, the Real Name of This Defendant Being Unknown to Plaintiff, Harry Meyers, and Joseph S. Klein, Defendants.

The defendant Knowles will be allowed by way of attorney's fee, payable by plaintiff, the sum of $150. In view of Knowles' offer to permit a consent decree to be taken against him, and plaintiff's refusal to assent thereto, I think he should, upon his motion to dismiss being held to be well founded, be entitled to receive something by way of counsel fees. My decision on the dismissal being largely controlled by a decision of the Circuit Court of Appeals rendered subsequent to argument before me I have made the amount of the fee smaller than I might otherwise have done had defendant prevailed.

JNO. C. KNOX,
U. S. D. J.

June 18, 1921.

44 *Final Amended Decree.*

At a stated term of the United States *States* District Court held in and *and* for the Southern District of New York at the Post Office Building, in the Borough of Manhattan, City of New York, on the 23rd day of June, 1921.

Present: Hon. John C. Knox, District Judge.

FOX FILM CORPORATION, Plaintiff,

vs.

FREDERICK M. KNOWLES, "WILLIAM" O. McWATTERS, the First Name, "William," Being Fictitious, the Real Name of This Defendant Being Unknown to Plaintiff, Harry Myers, and Joseph S. Klein, Defendants.

The defendant, Frederick M. Knowles, having made a motion to amend the decree entered herein on the 3rd day of June,
45 1921, by inserting, therein a reasonable attorney's fee, and the matter having come on for argument, and after hearing counsel for the respective parties.

It is, on motion of Bick, Godnick & Freedman, solicitors for the defendant Frederick M. Knowles,

Ordered, adjudged and decreed, that the decree made on the 3rd day of June, 1921, and entered in the office of the Clerk on the 7th day of June, 1921, be and the same hereby is amended to read as follows:

46 At a stated term of the United States District Court held in and *and* for the Southern District of New York at the Post Office building, in the Borough of Manhattan, city of New York, on the 3rd day of June, 1921.

Present: Hon. John C. Knox, District Judge.

FOX FILM CORPORATION, Plaintiff,

vs.

FREDERICK M. KNOWLES, "WILLIAM" O. McWATTERS, the First Name, "William," Being Fictitious, the Real Name of This Defendant Being Unknown to Plaintiff, Harry Myers, and Joseph S. Klein, Defendants.

The defendant, Frederick M. Knowles, having made a motion to dismiss the complainant's bill of complaint on the ground that it fails to state facts sufficient to constitute a cause of action, and after hearing counsel for the respective parties hereto, and due deliberation having been had

It is, on motion of Bick, Godnick & Freedman, solicitors for the defendant Frederick M. Knowles,

47 Ordered, adjudged and decreed, that the complainant, Fox Film Corporation, has no valid copyright to the poem entitled "Over the Hills to the Poorhouse" and to the poem entitled "Over the Hills from the Poorhouse," nor has it the exclusive right to dramatize the said poems, or either of them, and it is further

Ordered, adjudged and decreed, that the Fox Film Corporation the complainant herein, has no valid title to any copyright of the poems entitled "Over the Hills to the Poorhouse," and of the poem entitled "Over the Hills from the Poorhouse," and it is further

Ordered, adjudged and decreed, that the bill of complaint herein be and the same hereby is dismissed with costs, and it is further

Ordered, adjudged and decreed, that the defendant Frederick M. Knowles do recover from the complainant Fox Film Corporation, the sum of Twenty nine and 70/100 ($29.70) Dollars, as costs to be taxed by the Clerk of this Court, and the sum of One hundred fifty ($150.00) Dollars, as and for a reasonable attorney's fee, making the sum of One hundred seventy-nine and 70/100 Dollars, as his costs and that the defendant Frederick M. Knowles, have execution against the Fox Film Corporation therefor.

JOHN C. KNOX,
United States District Judge.

48 *Petition for Appeal.*

United States District Court, Southern District of New York.

E—19—290.

FOX FILM CORPORATION, Complainant,

against

FREDERICK M. KNOWLES, "WILLIAM" O. MCWATTERS (the First Name, "William," Being Fictitious, the Real Name of This Defendant Being Unknown to Plaintiff), Harry Meyers, and Joseph S. Klein, Defendants.

To the Honorable J. M. Mayer, District Judge:

The above named complainant Fox Film Corporation, feeling aggrieved by the decree made and entered in the above entitled action on the 3rd day of June, 1921, and the amended decree made and entered in the above entitled action on or about the 23rd day of June, 1921, which decree and amended decree dismissed the bill of complaint with costs and granted an allowance of One hundred and fifty ($150.00) dollars to the attorneys for the defendant, Frederick M.
49 Knowles, does hereby appeal from said decree and amended decree to the United States Circuit Court of Appeals for the Second Circuit, for the reasons set forth in assignment of errors filed herewith, and prays that this appeal be allowed; and that citations be issued as provided by law; and that a transcript of the record, proceedings and documents upon which the decree was based duly authenticated be sent to the United States Circuit Court of Appeals for the Second Circuit under the rules in said Court in such cases made and provided and your petitioner further prays that the proper order relating to the required security to be required of it be made.

Dated August 15th, 1921.

FOX FILM CORPORATION,
By JACK G. LEO,
Vice-Pres.
SAUL E. ROGERS, ESQ.,
Solicitor for Complainant.

Office & P. O. Address, 55th St. & Tenth Ave., Borough of Manhatton, New York City.

50 *Order Allowing Appeal.*

Appeal allowed upon giving bond as required by law for the sum of $500 *Dollars*, the same to act as a supersedeas bond to said execu-

tion pending appeal, and also as a bond for costs and damages on appeal.

Dated, New York, August 29, 1921.

J. M. MAYER,
U. S. D. J.

51 *Assignment of Errors.*

United States District Court, Southern District of New York.

FOX FILM CORPORATION, Complainant,

against

FREDERICK M. KNOWLES, "WILLIAM" O. McWATTERS (the First Name, "William," Being Fictitious, the Real Name of This Defendant Being Unknown to Complainant), Harry Myers, and Joseph S. Klein, Defendants.

Now comes the complainant in the above entitled action and files the following assignment of errors, which it will require upon its prosecution of the appeal in the above entitled cause from the decree made by this Honorable Court on the 3rd day of June, 1921, and the amended decree made on or about the 23rd day of June, 1921

1. That the United States District Court for the Southern District of New York erred in dismissing the bill of complaint on the ground that it did not allege facts sufficient to constitute a cause of action for infringement of the dramatic copyright of two

52 poems entitled "Over the Hill to the Poor House" and "Over the Hill from the Poor House" written by Will Carleton, and which were published in a collection of other poems entitled "Farm Ballads."

2. That the United States District Court for the Southern District of New York erred in dismissing the bill of complaint on the ground that Norman E. Goodrich, executor and sole legatee of the author Will Carleton, and the complainant's predecessor in title did not obtain a second valid renewal copyright of the poems "Over the Hill to the Poorhouse," and "Over the Hill from the Poor House" which renewal copyright purported to extend from the year 1915 to and including the year 1929.

3. That the United States District Court for the Southern District of New York erred in dismissing the bill of complaint on the ground that Norman E. Goodrich, executor and sole legatee of the author Will Carleton, and the complainant's predecessor in title did not obtain a second valid renewal copyright of a collection of poems entitled "Farm Ballads" which renewal copyright purported to extend from the year 1915 to and including the year 1929.

4. That the United States District Court for the Southern District of New York erred in dismissing the bill of complaint on the ground that after the decease of Will Carleton the author of "Over

the Hill to the Poor House" and "Over the Hill from the
53 Poor House" in 1912, he could not give or devise by will to any legatee or distributee whether same were his executor or any other persons, the right to obtain and receive the benefit of a further renewal copyright, although said author and owner of the first renewal copyright left him surviving no widow, children or heirs.

5. That the United States District Court for the Southern District of New York erred in dismissing the bill of complaint on the ground that after the decease of Will Carleton the author of the collection of poems entitled "Farm Ballads" in 1912, he could not give or devise by will to any legatee or distributee whether same were his executor or any other persons, the right to obtain and receive the benefit of a further renewal copyright although said author and owner of the first renewal copyright left him surviving no widow, children or heirs.

6. That the United States District Court for the Southern District of New York erred in dismissing the bill of complaint on the ground that although the author Will Carleton of the poems "Over the Hill to the Poor House" and "Over the Hill from the Poor House" and holder of the first renewal copyright which expired in 1915, left him surviving no widow, children or heirs, his executor, Norman E. Goodrich, before the expiration of said renewal copyright or at any other time, could not make a valid application for a further renewal of said copyright or in any manner obtain by reason of such application a valid renewal of said copyright which
54 would inure to the benefit of the legatees or distributees under the will of said author, whether same were the executor or any other persons, unless Will Carleton, the said author and holder of the first renewal copyright, died in 1914, one year before the expiration of the first renewal copyright obtained by him and which first renewal copyright expired in 1915.

7. That the United States District Court for the Southern District of New York erred in dismissing the bill of complaint on the ground that although the author, Will Carleton, of the collection of poems entitled "Farm Ballads" and holder of the first renewal copyright which expired in 1915, left him surviving no widow, children or heirs, his executor, Norman E. Goodrich, before the expiration of said renewal copyright, or at any other time, could not make a valid application for a further renewal of said copyright, or in any manner obtain by reason of such application, a valid renewal of said copyright which would inure to the benefit of the legatees or distributees under the will of said author, whether same were the executor or any other persons, unless Will Carleton, the said author and holder of the first renewal copyright died in 1914, one year before the expiration of the first renewal copyright obtained by him and which first renewal copyright expired in 1915.

8. That the United States District Court for the Southern District of New York erred in dismissing the bill of complaint on the

55 ground that even if an author dies leaving him surviving no widow, children or heirs, an executor cannot make a valid application for a renewal of copyright or obtain by reason of said application a valid renewal copyright for the benefit of the legatees or distributees unless the author dies within one year from the expiration of his copyright.

9. That the United States District Court for the Southern District of New York erred in dismissing the bill of complaint on the ground that even if the author dies leaving no widow, children or heirs, but leaves a will bequeathing all his property to a sole legatee who is also an executor named under said will, such executor cannot, under the copyright law, make a valid application for a further renewal copyright or obtain the benefit of same unless said author dies within a year preceding the expiration of said first renewal copyright, and in such event the next of kin, if any, would have a prior right to the said executor to make a valid application for a further renewal copyright and obtain the benefits therefrom.

Whereas the appellant prays that the said decree and amended decree be reversed, and that the said District Court for the Southern District of New York be ordered to enter a decree reversing the decision of the lower Court in said case.

SAUL E. ROGERS,
Attorney for Appellant.

Office and P. O. Address, 840 Tenth Avenue, Borough of Manhattan, New York City.

56 *Bond for Damages and Costs.*

District Court of the United States of America for the Southern District of New York, in the Second Circuit.

FOX FILM CORPORATION, Plaintiff,

vs.

FREDERICK M. KNOWLES et al., Defendant-.

Know all men by these presents that we, Fox Film Corporation, as Principal, and the United States Fidelity and Guaranty Company, having an office and usual place of business at No. 47 Cedar Street, in the City of New York, County and State of New York, as Surety, are held and firmly bound unto the above named Frederick M. Knowles et al., in the sum of Five Hundred ($500.00) Dollars, to be paid to the said Frederick M. Knowles et al., for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally firmly by these presents.

57 Sealed with our seals and dated the 30th day of August, 1921.

Whereas, the above named Fox Film Corporation has prosecuted its appeal to the United States Circuit Court of Appeals for the Second Circuit, to reverse the decree dated the 3rd day of June, 1921, rendered in the above entitled suit, in the District Court of the United States for the Southern District of New York.

Now, therefore, the condition of this obligation is such that if the above named Fox Film Corporation, shall prosecute its appeal to effect and answer all damages and costs if it fails to make its appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

FOX FILM CORPORATION, [L. S.]
By JACK G. LEO. [SEAL.]
UNITED STATES FIDELITY AND GUARANTY COMPANY,
By S. FRANK HEDGES,
Attorney-in-Fact.

Attest:
[SEAL.] WILLIAM H. ESTWICK,
Attorney-in-Fact.

58 STATE, CITY AND COUNTY OF NEW YORK, *ss:*

On this 31st day of August, 1921, before me came Jack G. Leo, to me known, who being by me duly sworn, did depose and say that he resides in the Borough of Bronx, City of New York; that he is the vice-president of the Fox Film Corporation, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

GEORGE BLECH,
Commissioner of Deeds, City of New York.

N. Y. County Clerk's No. 21140.
Kings County Clerk's No. 1108.
Commission expires Oct. 6, 1921.

59 STATE OF NEW YORK,
County of New York, ss:

On the 30th day of August, 1921, before me personally came S. Frank Hedges, known to me to be the Attorney-in-fact of the United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of Fox Film Corporation as surety thereon, who being by me duly sworn, deposes and says that he resides in the City of New York, State of New York, and that he is the Attorney-in-fact of the said United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said

Company is duly and legally incorporated under the laws of the State of Maryland; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Fox Film Corporation, is the corporate seal of the said United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by like order and authority as Attorney-in-fact of said Company; and that he is acquainted with William H. Estwick, and knows him to be the Attorney-in-fact of said Company; and that the signature of said William H. Estwick subscribed to said bond is in the genuine handwriting of William H. Estwick, and was thereto subscribed by order and authority of said Board of Directors and in the presence of said deponent, and that the assets of said Company, unincumbered and liable to execution exceed its claims, debts and liabilities of every nature whatsoever, by more than the sum of two million dollars ($2,000,000.00).

S. FRANK HEDGES.

Sworn to, acknowledged before me, and subscribed in my presence this 30th day of August, 1921.

C. H. BRADBURY,
Notary Public, Westchester County.

Certificates filed in the following counties:

New York Clerk's No. 791.
Register's No. 3632.
Kings, Clerk's No. 79.
Register's No. 3329.
Bronx, Clerk's No. 49.
Register's No. 52.
Queens No. 524.
Richmond, Nassau, Orange, Suffolk and Rockland.
Term Expires March 30th, 1923.

61 *Citation.*

United States District Court, Southern District of New York.

FOX FILM CORPORATION, Complainant-Appellant,

against

"WILLIAM" O. McWATTERS (the First Name, "William," Being Fictitious, the Real Name of This Defendant Being Unknown to Plaintiff), Harry Myers, and Joseph S. Klein, Defendants, and Frederick M. Knowles, Appellee-Defendant.

UNITED STATES OF AMERICA, *ss:*

To Frederick M. Knowles, Appellee-Defendant, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the
62 Second Circuit, to be held at the United States Court House at Postoffice Building, Borough of Manhattan, New York City, N. Y., on the sixth day of October, 1921, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein the Fox Film Corporation is complainant-appellant and you are appellee, to show cause, if any there be, why the decree entered against said appellant as in said appeal mentioned should not bet corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. M. Mayer, Judge of the District Court of the United States for the Southern District of New York, this 22nd day of September, in the year of our Lord, one thousand nine hundred and twenty-one, and of the Independence of the United States, the 146th.

J. M. MAYER,
United States District Judge.

63 *Stipulation.*

United States District Court, Southern District of New York.

FOX FILM CORPORATION, Complainant-Appellant,

against

FREDERICK M. KNOWLES, Defendant-Appellee, and "WILLIAM" O. McWatters (the First Name, "William," Being Fictitious, Real Name of This Defendant Unknown to Paintiff), Harry Myers, and Joseph S. Klein, Defendants.

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated, New York, October 31st, 1921.

SAUL E. ROGERS,
Attorney for Complainant-Appellant.
BICK, GODNICK & FREEDMAN,
Attorneys for Defendant-Appellee Frederick M. Knowles.

64 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

FOX FILM CORPORATION, Complainant-Appellant,

against

FREDERICK M. KNOWLES, Defendant-Appellant, and "WILLIAM" O McWatters (the First Name, "William," Being Fictitious, Real Name of This Defendant Unknown to Plaintiff), Harry Myers and Joseph S. Klein, Defendants.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In Testimony Whereof I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 31st day of October, in the year of our Lord one thousand nine hundred and twenty-one and of the Independence of the said United States the one hundred and forty-sixth.

[SEAL.] ALEX. GILCHRIST, JR.,
Clerk.

65 *Decision C. C. A.*

United States Circuit Court of Appeals for the Second Circuit.

Before Hough, Manton, Mayer, JJ.

FOX FILM CORPORATION, Complainant-Appellant,

vs.

FREDERICK M. KNOWLES, "WILLIAM" O. MCWATTERS (the First Name, "William," Being Fictitious, the Real Name of This Defendant Being Unknown to Plaintiff), Harry Myers, and Joseph S. Klein, Defendants-Appellees.

FOX FILM CORPORATION, Complainant-Appellant,

vs.

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS Baret, Corse Payton, Corse Payton Stock Company, and Johr Kaiser, Defendants-Appellees.

Saul M. Rogers, for Appellant.
Fred F. Weiss, for Appellee.

Per Curiam:

Decrees affirmed on authority of Silverman vs. Sunrise, etc., Co., 273 Fed., 909.

66 *Order for Mandate.*

At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit held at the Court Rooms, in the Post Office building, in the city of New York, on the 2nd day of February, one thousand nine hundred and twenty-two.

Present:

Hon. Charles M. Hough,
Hon. Martin T. Manton,
Hon. Julius M. Mayer,
Circuit Judges.

FOX FILM CORPORATION, Complainant-Appellant,

v.

FREDERICK M. KNOWLES et al., Defendants-Appellees.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

67 On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

C. M. H.
M. T. M.

(Endorsed:) United States Circuit Court of Appeals, Second Circuit. Fox Film Corpn. v. F. M. Knowles, et al. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 2, 1922. William Parkin, Clerk.

68 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 67 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Fox Film Corporation Complainant-Appellant, against Frederick M. Knowles, et al., Defendants-Appellees, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 16th day of February in the year of our Lord One Thousand Nine Hundred and Twenty-two and of the Independence of the said United States the One Hundred and Forty-sixth.

[Seal of the United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk.

69 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which Fox Film Corporation is appellant, and Frederick M. Knowles, "William" O. McWatters (the first name "William" being fictitious, the real name of this defendant being unknown to plaintiff), Harry Myers and Joseph S. Klein, are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of New York, and we, being willing for certain

reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, Do hereby
70 command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-ninth day of April, in the year of our Lord one thousand nine hundred and twenty-two.

WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

71 [Endorsed:] File No. 28781. Supreme Court of the United States, October Term, 1921. No. 826. Fox Film Corporation vs. Frederick M. Knowles et al. Writ of certiorari. United States Circuit Court of Appeals, Second Circuit. Filed May 5, 1922. William Parkin, Clerk.

72 In the Supreme Court of the United States, October Term, 1921.

No. 826.

FOX FILM CORPORATION, Petitioner,

v.

FREDERICK M. KNOWLES, "WILLIAM" O. MCWATTERS (the First Name, "William," Being Fictitious, the Real Name of this Defendant Being Unknown to Plaintiff), Harry Myers, and Joseph S. Klein, Respondents.

Stipulation as to Return to Writ of Certiorari.

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Second Circuit to the writ of certiorari granted therein.

SAUL E. ROGERS,
Counsel for Petitioner.
LOUIS R. BICK,
Counsel for Respondent.

73 To the Honorable the Supreme Court of the United States, Greeting:

The record and all proceedings whereof mention is within made having, lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of

counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

Dated New York May 6, 1922.

[Seal of the United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

74 & 75 [Endorsed:] 826—28781. United States Circuit Court of Appeals, Second Circuit. Fox Film Corporation v. F. M. Knowles, et al. Return to certiorari.

76 [Endorsed:] File No. 28781. Supreme Court U. S., October Term, 1921. Term No. 826. Fox Film Corporation, Petitioner, vs. Frederick M. Knowles et al. Writ of certiorari and return. Filed May 11, 1922.

Office Supreme Court, U.S.
FILED
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WM. R. STANSBU
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Supreme Court of the United States

OCTOBER TERM, 1921.

No. 825. 310

FOX FILM CORPORATION,

Appellant,

against

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS BARET, CORSE PAYTON, CORSE PAYTON STOCK COMPANY and JOHN KAISER,

Appellees.

NOTICE OF MOTION AND PETITION TO ADVANCE.

SAUL E. ROGERS,
Attorney for Appellant,
Office & P. O. Address,
850 Tenth Avenue,
Borough of Manhattan,
New York City.

Motion to Advance.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1921.

FOX FILM CORPORATION,
Appellant,
against
FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS BARET, CORSE PAYTON, CORSE PAYTON STOCK COMPANY and JOHN KAISER,
Appellees.
#825.

SIRS:

PLEASE TAKE NOTICE that upon the annexed petition of Saul E. Rogers, verified May 26, 1922, the undersigned will move this court, at a stated term thereof, to be held at the Supreme Court of the United States, Washington, D. C., on the 29th day of May, 1922, at the opening of court on that day, or as soon thereafter as counsel can be heard, for leave to advance the above entitled appeal, on the ground that it involves or affects a matter of general public interest, or in the alternative that the said appeal herein be transferred to the Summary Docket for the first Monday of October, 1922, by reason of the fact that the argument of the appeal herein and the argument of the appeal in the case of Fox Film Corporation, Appellants vs. Fderedick M. Knowles, et

al., Appellees, #826, involving the same questions, will not take over one-half hour for the appellant and the same time for the appellees, and for such other and further relief as may be proper in the premises.

Dated New York, May 26th, 1922.

Yours, etc.,

SAUL E. ROGERS,
Attorney for Appellant,
Office & P. O. Address,
850 Tenth Avenue,
Borough of Manhattan,
New York City.

To:
BICK, GODNICK & FREEDMAN, Esqs.,
Attorneys for Appellees,
215 Montague Street,
Borough of Brooklyn,
New York City.

Petition to Advance the Above Entitled Appeal. 7

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1921.

FOX FILM CORPORATION,
Appellant,

against

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS BARET, CORSE PAYTON, CORSE PAYTON STOCK COMPANY and JOHN KAISER,
Appellees.

#825. 8

TO THE SUPREME COURT OF THE UNITED STATES:

The petition of Saul E. Rogers, attorney for the appellant, respectfully shows and alleges:

FIRST: That this is an appeal from a decree of the United States Circuit Court of Appeals for the Second Circuit, affirming a decree of the District Court of the Southern District of New York dismissing the appellant's complaint in an action for infringement by the appellant against the appellees, in which it was determined that the appellant had no valid renewal dramatic copyright of two poems written by Will Carleton entitled "Over the Hill to the Poorhouse" and "Over the Hill from the Poorhouse", contained in a col- 9

10 lection called "Farm Ballads." Upon the authority of *Silverman* vs. *Sunrise Picture Corporation*, also decided in the Second Circuit (273 Federal Reporter, 909), it was determined that Section 24 of the Copyright Act was construed to be that in the absence of the widow or children the executor had no right to obtain a renewal of the prior copyright, unless the power or privilege of obtaining the renewal was existing in the testator-author at the moment of decease.

SECOND: On an application made by the appellant for a Writ of Certiorari to this Honorable
11 Court, said writ was duly granted on April 17, 1922, and the return to said writ has been duly filed with the Clerk of this Court on or about May 10, 1922.

REASONS FOR THE ALLOWANCE OF THE MOTION TO ADVANCE.

1. The question is one of great importance to the motion picture industry which is now using dramatic compositions in which the copyright protection is similar to that in this case. By reason of the uncertainty of the law with respect to the renewal of copyrights, producers hesitate
12 to invest large sums of money necessary to produce pictures that may involve the validity of a renewal copyright, when there is such uncertainty as to copyright protection.

2. The question is also of great importance because your petitioner is advised that recently several cases have arisen in the District Courts

and the Circuit Court of Appeals involving the same question, and that these cases are being held up pending the determination of this Court in the instant case. 13

3. The question is of great importance also to authors and dramatists, or their widows and children, or executors, legatees, or next-of-kin, in the numerous cases where the author has not lived to within one year of the expiration of his copyright.

Your petitioner is informed that registrations for renewal of copyrights are frequent, and until the law with respect to the renewal of copyrights is settled by this Court, persons who have been heretofore considered by Congress to be the natural recipients and objects of the author's bounty with reference to obtaining the benefits of renewal copyrights, are unable to dispose of such rights until the law with respect to renewal copyrights is settled by this honorable Court. 14

For the above reasons it is respectfully submitted that leave should be granted to advance the above appeal, because it involves or affects some matter of general public interest.

REASONS FOR TRANSFERRING APPEAL TO SUMMARY DOCKET FOR THE FIRST MONDAY OF OCTOBER, 1922. 15

Your petitioner further respectfully submits that in the alternative that leave be granted to transfer the above entitled appeal to the Summary Docket for the first Monday of October, 1922, for the reason that your petitioner, who intends to

16 argue the appeal alone on behalf of the appellant and the appeal in another case, entitled *Fox Film Corporation*, Appellant, vs. *Frederick M. Knowles, et al.*, Appellees, #826, involving the same question, will not take up more than one-half an hour in his argument in both cases before this Court, and your petitioner is also advised that counsel for the appellees have stated that they do not expect to take any longer time than one-half an hour in their argument in both cases on behalf of the appellees before this Court.

For the above reasons it is submitted that leave should be granted to advance this appeal to the
17 Summary Docket for the first Monday of October, 1922.

WHEREFORE, your petitioner prays that the motion for leave to advance herein be granted, because the appeal involves a matter of general public interest, or in the alternative that the appeal be transferred to the Summary Docket for the first Monday of October, 1922, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem proper.

SAUL E. ROGERS,
18 Petitioner.

SAUL E. ROGERS,
Attorney for Appellant,
Office & P. O. Address,
850 Tenth Avenue,
Borough of Manhattan,
New York City.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.: 19

SAUL E. ROGERS, being duly sworn, deposes and says:

That he is the petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

SAUL E. ROGERS.

Sworn to before me this
26th day of May, 1922. } 20

George Black

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